IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 516 OF 2001

Haffkine Bio-Pharmaceutical Corp... Petitioners
Employees Union and ors.

V/s.

State of Maharashtra & Anr. ... Respondents

Mr. N.M. Ganguli for the petitioner.
Ms. S.M. Dandekar, AGP for respondent No. 1.
Mr. P.M. Jadhav with Mr. V.P. Sawant & Mr. N.R. Patankar for respondent No. 2.

CORAM : F.I. REBELLO &
ANOOP V. MOHTA,JJ.
DATED : 4th October, 2006

P.C.

. The petitioners are claiming benefits of pension being ex-employees of erstwhile Haffkine Institute of respondent No. 1, absorbed in the services of respondent No. 2 and 3 i.e. Haffkine Bio-Pharmaceutical Corporation Ltd. and Haffkine Institute for Training, Research and Testing. The petitioners have also claimed benefit of resolution dated 26.05.1997.

2. The petitioners' details have been provided in Exh. "A", "B" which includes respective date of appointment, date of retirement. Exh. "A" further provides length of service of the petitioners which

was less than 10 years on the date of retirement i.e. 31.08.1975.

3. By notification dated 26th November, 1973, the Government has converted the Haffkine Institute, Bombay into two autonomous bodies, namely Haffkine Institute for Training, Research and Testing and Haffkine Bio Pharmaceuticals Corporation Limited. The effective date was declared as 1st September, 1975. Relative clause (4) of Resolution dated 30th April, 1975 is as under:-

> "(4) On discharge from the Government service the Government servants concerned should be provided with effect from the said date, with an appointment to the corresponding and equivalent posts in the new Institute or Corporation, as the case may be in the same scale and allowance at present admissible to them. On such appointment their terms and conditions of service under the New Institute or Corporation should not be less favourable than their existing terms and conditions of service and in particular, their terms and conditions pertaining to their existing scales of pay and allowances, pensionary benefits, provident fund, leave, medical benefits, facility to continue in Government accommodation and other benefits shall be protected as specified in Appendix "A" to this G.R. However, such a protection shall not extent to matters pertaining to their future promotions, which will be governed by the rules and regulations made by their new employers. The service rendered by them under Government will count for their

> pensionary and all other benefits as if it was a service rendered under the new body."

4. Those Government servants were discharged accordingly. The respondent Government had sought option from all the members of the staff on the establishment of existing institute regarding their appointment under new institute or corporation on or before 31st July, 1975. As reproduced above clause (4) of the notification dated 30th April, 1975, the terms and conditions for appointment of the staff of the Haffkine Institute was referred as part and parcel of the said circular. The relevant clause (5) of the said Appendix "A" to the circular dated 30th April, 1975 is reproduced as under:-

> "(v) The pensionary liability in respect of the service rendered under the Government by a permanent employee, who is eligible for pension, will be of Government and the said pension will be payable when the said employee finally retires from Haffkine Institute for Training, Research and Testing/Haffkine Bio-Pharmaceutical Corporation Ltd., on attaining the age of 50 years (if he was holding a gazette post) and 55 years (if he was holding a non-gazetted post), as per Government Resolution, Finance Department No. PEN 1067/49/67, dated 17th October, 1967 and PEN 1072/596 dated 25th April, 1973 or on superannuation.

5. The respondent has averred and relied upon the resolution Nos. PEN 1067/49/67, dated 17th October,

1967 and PEN 1072/596 dated 25th April, 1973 as referred above, in following words:

> "I say that Government Resolution dated 30th April, 1975 is very clear as regards to the entitlement of the pensionery liability of the permanent employees. The said G.R. is annexed as Exhibit "A" to the petition, however, it is incomplete. I say that as per clause (V) of Annexure "A" to the said Government Resolution the permanent employees who were working in the Government Department and rendered more than 10 years of service till 31st August, 1975 are eligible for pension vide G.R. F.D. No. PEN 1067/49/67, dated 17th October, 1967 & PEN 1072/596 dated 25th April, 1973. I say that the above criteria for the eligibility of pension is also mentioned in Maharashtra Civil Services Rules, 1982 (67) (b) which says that Government employee is eligible for the benefit of pension on completion of minimum 10 years of services. I say that in the year 1975 instead of MCSR Rules BCSR Rules and Government Resolutions were applicable but the criteria was same.

6. The relevant clause of Government Circular dated 17th October, 1967 reads as follows:

> "In cases where a government servant at the time of absorption has less than 10 years service and is not entitled to pension, the question of proportionate pension will not arise, he will only be eligible to proportionate service gratuity

in lieu of pension and to death-cum-retirement gratuity based on length of service."

7. The respondents further have relied on circular/Government Resolution dated 28th April, 1981, whereby policy decision taken by the Finance Department regarding various pension schemes and available criteria for the employees who have been permanently absorbed in public sector undertaking after abolition of the posts. The respondents submitted and stated that as per said resolution Clause VII (2), it was made very clear by the Finance Department that benefits of the pension will not be admissible to the families of those who absorbed before rendering 10 years qualifying service.

8. In this undisputed position of facts and the Government Resolution and policy on record, in no way petitioners can claim continuation of the family pension as claimed in the present petition. The petitioners who were employees of Haffkine Institute had admittedly not completed 10 years of service on 1st September, 1975. As per the Government Resolution

dated 30th April, 1975, the effective date of bifurcation was 01.09.1975. As noted, the Appendix "A" to the said circular dated 30th April, 1975 refers to the Notification dated 17th October, 1967 and 25th April, 1979. Since the said notification itself provides that in cases where a Government servant at the time of absorption has less than 10 years of service, is not entitled to pension, the question of proportionate pension will not arise. He will only be eligible to proportionate service gratuity in lieu of pension and to death-cum-retirement benefits based on length of service. The petitioners therefore have admittedly not completed 10 years of service prior to 11.09.1975. This fact was well within their knowledge.

9. The claim as well as challenge at this stage by the petitioners, in view of above Government Resolution is difficult to accept.

10. In view of this petition is rejected. Rule discharged. No costs.

[F.I. REBELLO, J.]

[ANOOP V. MOHTA, J.]